

## Memorandum

**To:** Honorable Jerome E. Horton, Chairman  
Honorable Michelle Steel, Vice Chair  
Honorable Betty T. Yee, First District  
Senator George Runner, Second District  
Honorable John Chiang, State Controller

**Date:** October 8, 2014

**From:** Randy Ferris *RWF*  
Chief Counsel

**Subject:** Board Meeting, November 19-20, 2014  
Item J – Chief Counsel’s Rulemaking Calendar  
Regulation 140.1, *Requirements for Managing General Partner of Limited Partnership for Welfare Exemption for Low-Income Housing Properties*

We request your approval to place proposed changes to Property Tax Rule 140.1, *Requirements for Managing General Partner of Limited Partnership for Welfare Exemption for Low-Income Housing Properties*, on the Chief Counsel’s Rulemaking Calendar for the November 19-20, 2014 Board meeting. The rule defines the term “managing general partner” and prescribes the requirements to establish that an eligible nonprofit corporation is the managing general partner of a limited partnership for purposes of qualifying for the welfare exemption under Revenue and Taxation Code section 214, subdivision (g). The proposed changes make the rule consistent with the repeal of Corporations Code sections 15611 and 15641 and the enactment of Corporations Code sections 15901.02 and 15904.01.

Corporations Code section 15611, subdivisions (l), (n), (q), and (r), respectively, defined the terms “foreign limited partnership,” “general partner,” “limited partner,” and “limited partnership” for purposes of the Revised Limited Partnership Act (Corp. Code, §§ 15611-15724). Corporations Code section 15641 governed the admission of general partners to limited partnerships under the Revised Limited Partnership Act.

Corporations Code sections 15901.02 and 15904.01 were included as part of the Uniform Limited Partnership Act of 2008, which was enacted by Assembly Bill No. (AB) 339 (Stats. 2006, ch. 495, § 20). Corporations Code section 15901.02, subdivisions (k), (m), (p), and (q), respectively, define the terms “foreign limited partnership,” “general partner,” “limited partner,” and “limited partnership” for purposes of the Uniform Limited Partnership Act of 2008. Corporations Code section 15904.01 governs the

admission of general partners to limited partnerships under the Uniform Limited Partnership Act of 2008.

Also enacted as part of the Uniform Limited Partnership Act of 2008 was Corporations Code section 15912.06, which by its terms provided for Corporations Code sections 15901.02 and 15904.01 to apply to all limited partnerships beginning on January 1, 2010. In addition, Corporations Code section 15724 was enacted as part of AB 339 in order to provide for the repeal of the Uniform Limited Partnership Act, including Corporations Code sections 15611 and 15641, effective January 1, 2010. Therefore, in accordance with Corporations Code sections 15724 and 15912.06, the provisions of Corporations Code section 15611 were superseded by the provisions of Corporations Code section 15901.02 and the provisions of Corporations Code section 15641 were superseded by the provisions of Corporations Code section 15904.01, beginning on January 1, 2010.

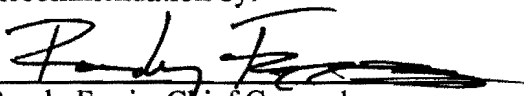
The proposed changes to Property Tax Rule 140.1 replace references to repealed Corporations Code section 15611, subdivisions (l), (n), (q), and (r), with references to current Corporations Code section 15901.02, subdivisions (k), (m), (p), and (q), respectively, and replace a reference to Corporations Code section 15641 with a reference to current Corporations Code section 15904.01.

Based on the foregoing, Board staff will request the Board's authorization to change Property Tax Rule 140.1 under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process. These changes are appropriate for processing under Rule 100 because they make the regulation consistent with current law and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

Attached is a strikeout and underlined version of Property Tax Rule 140.1 illustrating the proposed changes.

If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at (916) 323-3091.

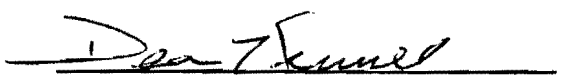
Recommendation by:

  
Randy Ferris, Chief Counsel

Approved:


  
Cynthia Bridges, Executive Director

Approved:

  
Dean Kinnee, Acting Deputy Director  
Property and Special Taxes Department

BOARD APPROVED

At the 11-19-14 Board Meeting

  
Joann Richmond, Chief  
Board Proceedings Division

RF:BH:yg

Attachment

cc:	Ms. Cynthia Bridges	MIC:73
	Mr. Dean Kinnee	MIC:64
	Ms. Joann Richmond	MIC:80
	Mr. Robert Tucker	MIC:82
	Mr. Richard Moon	MIC:82
	Mr. Bradley M. Heller	MIC:82
	Ms. Glenna Schultz	MIC:64

Text of Proposed Changes to  
California Code of Regulations, Title 18, Section 140.1

Rule 140.1. Requirements for Managing General Partner of Limited Partnership for Welfare Exemption for Low-Income Housing Properties.

(a) Definitions. The definitions set forth in this regulation shall govern the construction of Revenue and Taxation Code section 214, subdivision (g), which provides the requirements for the welfare exemption for low-income housing properties owned by a limited partnership in which the managing general partner is an eligible nonprofit corporation or eligible limited liability company.

(1) "General partner" means "general partner" as defined by section 15901.02+561+, subdivision (mn) of the Corporations Code.

(2) "Limited partner" means "limited partner" as defined by section 15901.02+561+, subdivision (pn) of the Corporations Code.

(3) "Limited partnership" means a "limited partnership" as defined by section 15901.02+561+, subdivision (qn) of the Corporations Code, or a "foreign limited partnership" as defined by section 15901.02+561+, subdivision (kl) of the Corporations Code.

(4) "Limited partnership agreement" means any valid written agreement of the partners as to the affairs of a limited partnership and the conduct of its business, including all amendments thereto.

(5) "Majority in interest of the general partners" means more than 50 percent of the interests of the general partners, and does not include the interests of any of the limited partners, in the current profits derived from business operations of the limited partnership.

(6) "Managing general partner" means a general partner that:

(A) is a nonprofit corporation, or an eligible limited liability company meeting the requirements of Revenue and Taxation Code section 214, designated in the limited partnership agreement as the "managing general partner" of the limited partnership;

(B) is authorized to receive a partnership management fee, or similar form of compensation, payable in the amount and the manner set forth in the limited partnership agreement or other agreement executed by all of the general partners for performing its duties;

(C) has "material participation," as defined in subdivision (a)(7) below, in the control, management, and direction of the limited partnership's business; and

(D) the officers and directors of the for-profit general partners, for-profit limited partners, or any of its for-profit affiliates, do not, as individuals or collectively, have a controlling vote or majority interest in the nonprofit managing general partner.

(7) “Material participation” means that the limited partnership agreement or other agreement executed by all of the general partners expressly provides that the managing general partner:

(A) has a right to vote in all the “major decisions,” defined in subdivision (a)(8) below;

(B) performs “substantial management duties,” defined in subdivision (a)(10) below;

(C) directly, or indirectly under its supervision, manages the limited partnership;

(D) annually conducts a physical inspection of the low-income housing property to ensure that the property is being used as low-income housing and meets all of the requirements set forth in Regulation 140; and

(E) annually submits a certification to the county assessor for the county in which the property is located that the low-income housing property meets all of the requirements set forth in Regulation 140.

(8) “Major decisions” means those acts, if any, that require a vote of a majority in interest of the general partners.

(9) “Partner” means a limited or general partner.

(10) “Substantial management duties” means that the managing general partner actually performs five or more of the following partnership management duties on behalf of the limited partnership:

(A) rents, maintains and repairs the low-income housing property, or if such duties are delegated to a property management agent, participates in hiring and overseeing the work of the property management agent;

(B) participates in hiring and overseeing the work of all persons necessary to provide services for the management and operation of the limited partnership business;

(C) executes and enforces all contracts executed by the limited partnership;

(D) executes and delivers all partnership documents on behalf of the limited partnership;

(E) prepares or causes to be prepared all reports to be provided to the partners or lenders on a monthly, quarterly, or annual basis consistent with the requirements of the limited partnership agreement;



(F) coordinates all present and future development, construction, or rehabilitation of low-income housing property that is the subject of the limited partnership agreement;

(G) monitors compliance with all government regulations and files or supervises the filing of all required documents with government agencies;

(H) acquires, holds, assigns or disposes of property or any interest in property;

(I) borrows money on behalf of the limited partnership, encumbers limited partnership assets, places title in the name of a nominee to obtain financing, prepays in whole or in part, refinances, increases, modifies or extends any obligation;

(J) pays organizational expenses incurred in the creation of the partnership and all operational expenses;

(K) determines the amount and timing of distributions to partners and establishes and maintains all required reserves; and

(L) ensures that charitable services or benefits, such as vocational training, educational programs, childcare and after-school programs, cultural activities, family counseling, transportation, meals, and linkages to health and/or social services are provided or information regarding charitable services or benefits are made available to the low-income housing tenants.

(b) The managing general partner must maintain records and documents evidencing the duties performed by the managing general partner. Such records and documents may include, but are not limited to:

(1) accounting books and records;

(2) tax returns;

(3) budgets and financial reports;

(4) reports required by lenders;

(5) documents related to the construction or rehabilitation of real property;

(6) legal documents such as contracts, deeds, notes, leases, and deeds of trust;

(7) documents related to complying with government regulations and filings;

(8) documents related to property inspections;

(9) documents related to charitable services or benefits provided or the information provided regarding such services or benefits;

(10) reports prepared for the partners;

(11) bank account records;

(12) audited annual financial statement of the limited partnership; and

(13) property management agreement.

(c) Substitution of Managing General Partner. A limited partnership in which the managing general partner is an eligible nonprofit corporation or an eligible limited liability company that has qualified for the welfare exemption for low-income housing may allow a substitution of its managing general partner by another eligible nonprofit corporation or eligible limited liability company without affecting the organizational qualification for the welfare exemption provided that:

(1) the limited partnership agreement authorizes the withdrawal or removal of the managing general partner and the admission of a substitute managing general partner on the same effective date and such admission of the substituting managing general partner into the limited partnership is in compliance with the requirements of section 15904.01~~15641~~ of the Corporations Code; and

(2) the substitute managing general partner meets all of the requirements of a managing general partner set forth in subdivision (a)(6) above.

(d) Delegation of Authority Clause. If the limited partnership agreement contains a delegation of authority clause, such clause must provide either that:

(1) the managing general partner may not delegate any of its substantial management duties defined in (a)(10) above; or

(2) the managing general partner may delegate its substantial management duties, defined in (a)(10) above, to persons who, under its supervision, may perform such duties for the partnership subject to the supervision by the managing general partner. If the managing general partner elects to delegate one or more of its substantial management duties, the managing general partner must demonstrate that it is actually supervising the performance of the delegated duties.

(e) Certification Requirements. The limited partnership must file for and receive a supplemental clearance certificate from the Board as provided in Regulation 140.2.

(f) The provisions of this regulation shall apply prospectively to claims or applications for the welfare exemption under Revenue and Taxation Code section 214 and supplemental clearance

certificates under Regulation 140.2, filed on or after the effective date of this regulation. For supplemental clearance certificates issued prior to the effective date of this regulation, claimants shall have until the January 1, 2007 lien date to be in compliance with this regulation unless the Board has issued a written notice of noncompliance. If the Board has issued such notice, claimant shall have 90 days from the date of the notice to comply with this regulation. Upon written request for an extension of time prior to the expiration of the 90-day period to comply, the Board shall grant a reasonable amount of time to comply with this regulation.

Note: Authority cited: Section 15606, Government Code. Reference: Section 214, Revenue and Taxation Code.